THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

***+ Writ Petition Nos.* 26271, 26272 & 26366 of 2006**

% Dated 27.02.2007

Jaggampeta Co-operative Rural Bank Limited, Jaggampeta Village & Mandal, rep., by its Secretary, Pilli Sitaramaswamy, S/o.Narasaiah, aged about 52 years, R/o. Jaggampeta Village & Mandal, East Godavari District.

....Petitioner

$ The Deputy Registrar of Co-operative Societies, Peddampuram, East Godavari District and others.

....Respondents

! Counsel for the petitioner : Smt Bobba Vijaya Lakshmi
^ Counsel for respondents 1 and 2 : GP for Co-operation
^ Counsel for respondent No.3 : Sri Y.V.Ravi Prasad

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? Cases referred:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.26271, 26272 & 26366 of 2006

Date: 27.02.2007

Between:

Jaggampeta Co-operative Rural Bank Limited, Jaggampeta Village & Mandal, rep. By its Secretary.

....Petitioner

And

The Deputy Registrar of Co-operative Societies, Peddampuram, East

Godavari District and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.26271, 26272 & 26366 of 2006

COMMON ORDER:

These three writ petitions are directed against the common order, dated 13.10.2005, passed by the A.P. Co-operative Tribunal at Visakhapatnam in O.A.Nos.32, 33 and 34 of 2005.

The petitioner is a Society registered under the A.P. Co-operative Societies Act, 1964 (for short 'the Act'). The third respondent herein functioned as the President of the Society between 01.08.1995 and 08.09.2003. The District Co-operative Officer, Kakinada, directed an enquiry, under Section 51 of the Act, into the working of the said Society, through his proceedings dated 29.04.2003. The enquiry was conducted by the Divisional Co-operative Officer, Peddapuram and a report was submitted on 02.09.2004, pointing out certain financial irregularities on the part of the third respondent and the then Secretary, by name G.Trimurthulu. On the basis of this report, proceedings were initiated under Section 60 of the Act and the second respondent was authorised in this regard.

After issuing notice to the third respondent and other affected parties, the second respondent passed surcharge orders, dated 26.04.2005, requiring the third respondent and the then Secretary, to restore a sum of Rs.2,76,000/- with interest at the rate of 24% per annum. The petitioner-Society filed two applications for execution of the surcharge orders. Thereupon, the third respondent filed one O.A. against the order, dated 26.04.2005, under Section 60 of the Act and two O.As. against the two execution proceedings, before the A.P. Co-operative Tribunal. It was urged that he was not issued proper notice and no opportunity was given to him to participate in the proceedings. Accepting the contention of the third respondent, the Tribunal allowed the Original Applications. Hence, these three writ petitions.

The petitioner contends that the second respondent followed all the steps and the third respondent had not only participated in the proceedings but also deposed as a witness in the surcharge proceedings and in that view of the matter, the order passed by the Tribunal cannot be sustained in law.

The third respondent filed a common counter affidavit on behalf of respondents 1 to 3. He states that he was not provided with an opportunity to cross-examine the witnesses that were examined in the proceedings under Section 51 of the Act and the same resulted in serious procedural lapse. He further contends that the second respondent was not certain and clear about the nature of liability to be fastened against various persons, against whom the surcharge proceedings were initiated.

Smt Bobba Vijaya Lakshmi, learned counsel for the petitioner submits that the Tribunal committed factual and legal errors in setting aside the surcharge order, as a whole. She contends that the third respondent did not choose to file any written statement in response to the notice issued under Section 60 of the Act and all the same, he was examined as a witness. She contends that when there was no denial of the charge against him, the question of his being permitted to examine the witnesses that deposed in enquiry under Section 51 of the Act does not arise. Learned counsel submits that even if there was any minor error, the Tribunal ought to have remanded the matter to the second respondent for fresh consideration and disposal.

Sri Y.V.Ravi Prasad, learned counsel for the third respondent submits that the enquiry under Section 51 of the Act

is administrative in nature and no witnesses would be permitted to be cross-examined, therein. He also submits that when the report under Section 51 of the Act constituted the basis for surcharge proceedings, the third respondent ought to have been provided with an opportunity to cross-examine all the concerned witnesses and ultimately, contends that the order passed by the Tribunal does not warrant interference.

The third respondent functioned as a President of the petitioner-Society almost for eight years. Even while he was in Office, enquiry under Section 51 of the Act was initiated. On the basis of the report submitted under Section 51 of the Act, a notice under Section 60 of the Act was issued to the third respondent. The record discloses that he did not choose to file any written statement or explanation thereto. Be that as it may, he participated in the enquiry and deposed as a witness. It is s not clear as to whether any witnesses were examined in the enquiry under Section 51 of the Act and whether the third respondent made any request to the second respondent, to permit him to cross examine them. After discussing the matter at length, the second respondent passed the surcharge order against the third respondent.

The Tribunal proceeded as though the third respondent was not provided with any opportunity at all. The order does not refer to the deposition of the third respondent nor to the request, if any, made by him to the second respondent to permit him to cross-examine the witnesses that deposited in the enquiry under Section 51 of the Act. If the third respondent was of the view that

the report under Section 51 of the Act suffers from any serious illegality or irregularity, he ought to have pointed out the same through a written representation. He did not choose to do so. The Tribunal had simply accepted the contention of the third respondent and has straight away set aside the surcharge order.

The Tribunal fell in error in setting aside the surcharge order, as a whole. Such a course was available to the Tribunal, if only the proceedings were initiated by an authority not vested with the power. If any minor mistakes or irregularities crept into the order, it ought have mentioned the same and remanded the matter to the second respondent for fresh consideration. Further, the Tribunal did not have any occasion to adjudicate upon the merits of the matter, inasmuch as it did not record any evidence on its own, nor the evidence recorded in the previous proceedings was discussed. Simply because, the surcharge order did not point out the extent of the liability of the third respondent, or that it did not made clear as to whether the liability was joint and several or otherwise, there was no basis for setting aside the entire proceedings.

For the foregoing reasons, the Writ Petitions are allowed and the common order, dated 13.10.2005, in O.A.Nos.32, 33 and 34 of 2005 is set aside. The said order is modified to the effect that the surcharge order, dated 26.04.2005, and the orders passed in the execution petitions, filed in relation thereto, are set aside, on the ground that a clear finding does not exist, as to the nature and extent of liability of the third respondent. The matters shall stand remanded to the second respondent for fresh

consideration and disposal, within a period of three (3) months from the date of receipt of this order. It shall be open to the third respondent to file a written statement within one (1) week from the date of receipt of notice, after remand, and put forward such contentions, as are available to him in law. There shall be no order as to costs.

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27.02.2007

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